

REBUTTAL TESTIMONY
OF
MARK MAPLE
ENGINEERING DEPARTMENT
ENERGY DIVISION
ILLINOIS COMMERCE COMMISSION

AGL RESOURCES INC.,
NICOR INC.,
and
NORTHERN ILLINOIS GAS COMPANY
d/b/a
NICOR GAS COMPANY

Application for Approval of a Reorganization
pursuant to Section 7-204 of the Illinois Public
Utilities Act

DOCKET NO. 11-0046

JUNE 23, 2011

1 Q. Please state your name and business address.

2 A. My name is Mark Maple and my business address is Illinois Commerce
3 Commission, 527 East Capitol Avenue, Springfield, Illinois 62701.

4 Q. Are you the same Mark Maple who previously filed direct testimony in this
5 docket?

6 A. Yes, I presented ICC Staff Exhibit 11.0.

7 Q. What recommendation did you make in your direct testimony?

8 A. I recommended that the Commission decline to approve the Joint
9 Applicants' request for approval of a reorganization based on the fact that
10 I could not determine if the Joint Applicants had met the criteria in Section
11 7-204(b)(1) of the Public Utilities Act ("PUA"). In short, I believed that AGL
12 had not performed a thorough due diligence review of Nicor prior to the
13 merger, nor have the Joint Applicants provided any documentation about
14 how they intend to integrate the companies and operate the utility going
15 forward. Therefore, I had no basis to conclude that "the proposed
16 reorganization will not diminish the utility's ability to provide adequate,
17 reliable, efficient, safe and least-cost public utility service."

18 Q. Are you changing your recommendation?

19 A. No. I continue to recommend that the Commission deny the application.

20 Q. What is the purpose of your rebuttal testimony?

21 A. I am responding to the points made by Joint Applicants' witness, Mr.
22 Linginfelter, in his rebuttal testimony (JA, Ex. 8.0). Mr. Linginfelter was the
23 only witness to respond to my testimony regarding the Section 7-204(b)(1)
24 concerns about whether the reorganization would diminish Nicor Gas'
25 ability to provide adequate, reliable, efficient, safe and least-cost public
26 utility service.

27 Q. Did Mr. Linginfelter satisfy your concerns?

28 A. No.

29 Q. Can you summarize what Mr. Linginfelter said in his rebuttal testimony
30 regarding your recommendation?

31 A. Mr. Linginfelter states that the Joint Applicants have demonstrated that
32 they have satisfied Section 7-204(b)(1) of the PUA "by showing how the
33 Reorganization will affect Nicor Gas **going forward**." (JA Ex. 8.0, p. 5,
34 emphasis in original) He also argues that it was not necessary for AGL to
35 perform a thorough due diligence review of confidential information before
36 deciding to purchase Nicor because there is plenty of public information
37 available to properly evaluate the merger. Finally, he argues that it is not

38 necessary to have operational integration plans completed at this stage,
39 as the Joint Applicants have already demonstrated their commitment to
40 maintaining and improving Nicor's performance.

41 Q. Do you agree that the Joint Applicants have demonstrated that they have
42 satisfied Section 7-204(b)(1) of the PUA "by showing how the
43 Reorganization will affect Nicor Gas ***going forward***?"

44 A. No. Perhaps Mr. Linginfelter did not understand my concerns. As a gas
45 engineer, my review focused on what actions the AGL had taken to
46 familiarize itself with the day-to-day and long-term operations and planning
47 of Nicor Gas in order to assure that subsequent to the reorganization,
48 Nicor Gas would continue to provide adequate, reliable, efficient, safe and
49 least-cost public utility service. I have seen no substantive evidence that
50 AGL has a fundamental knowledge of the Nicor Gas operational system.

51 Q. In Mr. Linginfelter's view, showing how the Reorganization will affect Nicor
52 Gas going forward "starts with an assessment of the acquirer," (*Id.*) do you
53 agree?

54 A. While I agree that an assessment of the acquirer is part of the equation, I
55 do not agree that, for purposes of my Section 7-204(b)(1) analysis, the
56 assessment of the acquirer has any meaning divorced from the acquirer's
57 knowledge of and plans for operation of the Nicor Gas system. My

58 testimony is not intended to be critical in any way of AGL or its operations
59 in other states. My analysis is focused on the Nicor Gas operations, in
60 particular whether AGL will be able to operate the system without any
61 diminution in service quality.

62 Q. Mr. Linginfelter seems to indicate that the commitment AGL Resources
63 made relating to staffing should be heavily weighed by the Commission.
64 (*Id.*, p. 5) Does that commitment affect your opinions of whether the
65 proposed reorganization will diminish Nicor Gas' ability to provide
66 adequate, reliable, efficient, safe and least-cost public utility service?

67 A. I assume Mr. Linginfelter is referring to the Application which states, "AGL
68 Resources has committed to maintaining the level of full time equivalent
69 employees across Nicor Gas' service territory for a period of at least three
70 years." (Application, p. 5, ¶ 7) and his testimony about maintaining a
71 "comparable workforce." (JA Ex. 1.0, p. 9) Certainly, a commitment to
72 maintaining equivalent employees for a period of three years helps to lay a
73 foundation for continued adequate service quality. However, I do not
74 understand this to be a commitment to maintain the identical employees or
75 practices and it does not address concerns about the plant and
76 operations.

77 Q. As Mr. Linginfelter points out, "Nicor Gas has a history of providing safe

78 and adequate service” (JA Ex. 8.0, p. 6), does that satisfy your concerns?

79 A. No. Again, Section 7-204(b)(1) PUA requires the Commission to make a
80 finding that “the proposed reorganization will not diminish the utility’s
81 ability to provide adequate, reliable, efficient, safe and least-cost public
82 utility service.” Nicor Gas’ history of providing safe and adequate service
83 does not address what affect the proposed reorganization will have on the
84 service. In order for me to analyze the effect of the reorganization I would
85 need to review AGL’s analysis of the system and plans for its future
86 operation.

87 Q. Mr. Linginfelter states, “Nicor Gas is the low-cost provider of gas
88 distribution service in Illinois today ... Staff did not contest this fact in its
89 direct testimony. That model matches the cost management philosophy of
90 AGL Resources. Nothing that we plan will impair Nicor Gas’ ability to
91 keep that distinction.” (*Id.*, p. 6) How does that affect your analysis?

92 A. I do not disagree with any of those statements. But, they do nothing to
93 satisfy the inquiry as to whether the reorganization will diminish service. If
94 anything it raises the question of whether, after the reorganization, Nicor
95 Gas will continue to be the low-cost provider of gas distribution service.
96 Neither does the statement that “[n]othing we plan will impair Nicor Gas’
97 ability to keep that distinction” with no documentation as to what they plan

98 provide any fact upon which to base a finding that there will be no
99 diminution of service. It begs the question, 'what do they plan,' but I have
100 not seen an answer to that question.

101 Q. Mr. Linginfelter says that you missed the point when being critical of the
102 Joint Applicants not having any integration studies completed. (*Id.*, p. 6)
103 Do you agree with his assessment?

104 A. No. I understand that the integration process is complex and requires a
105 certain amount of time and effort to complete. I do not want the Joint
106 Applicants to rush through the process for the sake of this docket.
107 However, the Joint Applicants should be able to demonstrate that they
108 have thoroughly studied every aspect of the companies involved and can
109 make careful decisions about policies and standards that affect service for
110 ratepayers. It is all well and good for the Joint Applicants to have a
111 carefully organized process that includes appropriate representatives from
112 both companies, but what concerns me is what AGL knows about Nicor
113 Gas operations and how AGL will continue to operate it after the
114 reorganization.

115 Q. Mr. Linginfelter states that the first step in the integration studies process
116 is for the companies to fully understand each other's current processes,
117 structure and practices. (*Id.*) Do you agree?
118

119 A. Yes. That is exactly the point I tried to make in my direct and now rebuttal
120 testimony. In particular it is essential for AGL to have an understanding
121 of Nicor Gas' current processes, structure and practices in order to
122 determine whether it can continue to provide the same level of service.
123 My only criticism is that for purposes of the Section 7-204(b)(1) finding,
124 this understanding is something that should have taken place during the
125 due diligence review, or prior to filing the Application with the Commission.

126 Q. Mr. Linginfelter states that the Joint Applicants commit that no decision will
127 be made that will impair the ability of Nicor Gas to meet its obligations to
128 its customers. (*Id.*, pp. 6-7) What is your response?

129 A. I would expect that the Joint Applicants would not intentionally make a
130 decision that would impair Nicor Gas' service. However, the Commission
131 cannot just take the Joint Applicants' word that they will make decisions
132 that are in the best interests of ratepayers. It is my role to analyze the
133 Companies' plans and to make a recommendation to the Commission as
134 to the likelihood of a diminution in service. Oftentimes, a policy that has
135 the benefit of saving time or money for the utility has the negative effect of
136 diminishing service for ratepayers. It is reasonable, and I believe
137 absolutely necessary, for the Commission to insist on seeing that the Joint
138 Applicants have at least some understanding of Nicor's gas distribution
139 system and how the Joint Applicants plan to operate the new utility before
140 approving the reorganization. At this point, I have been provided no

141 information to indicate that AGL is aware of the details of Nicor Gas' plant
142 or operations and the Joint Applicants indicate that the integration plans
143 do not even currently exist. I have seen no evidence that the Joint
144 Applicants have a good idea of what they are acquiring, other than the fact
145 that it is a gas utility.

146 Q. Mr. Linginfelter states that your "testimony misses the big picture on why
147 the Commission should find the conditions of Section 7-204(b)(1) have
148 been satisfied." (*Id.*, p. 7) Do you have a response?

149 A. I do not interpret Section 7-204(b)(1) as requiring a "big picture" analysis.
150 As a gas engineer; my understanding is that the issue is grounded in the
151 basic question of whether or not ratepayers will continue to receive the
152 same adequate, reliable, efficient, safe and least-cost service. My
153 analysis is limited to the nuts and bolts issue of whether or not service will
154 be diminished.

155 Q. Mr. Linginfelter indicated that he had been involved in the process of
156 evaluating whether to buy a utility in the past and "[e]xamining reams of
157 schedules, reports and engineering schematics *before* you make an offer
158 (the "due diligence" referenced by Mr. Maple) is not the only means by
159 which an acquirer determines the quality of a system and is certainly not
160 indicative of how it will be operated following Reorganization." (*Id.*, p. 7)
161 What is your reaction?

162 A. I am not criticizing AGL's decision to purchase Nicor Gas or questioning

163 the quality of the system. My analysis is based upon the requirement in
164 the PUA that the Commission must find that the reorganization will not
165 diminish Nicor Gas' service. I am not aware of how one makes that
166 determination without examining what the acquirer knows about the
167 physical system and how the AGL intends to operate the system.

168 On a similar note, Mr. Linginfelter references the "strong public securities
169 regulation and investors' demands for detailed information" (*Id.*) as
170 reasons why AGL did not need to pursue due diligence. However, AGL
171 has not provided me with any information which demonstrates that AGL
172 familiarized itself with the physical system and operations of Nicor Gas.
173 To be clear, if AGL has that information, regardless of whether it came
174 from its due diligence review or from the securities regulation, in response
175 to investor's demands for detailed information or as a result of the
176 Sarbanes-Oxley legislation (See *Id.*, p. 9), that is the information that I
177 would need to review to change my recommendation.

178 Q. How can the Joint Applicants thoroughly study the integration process
179 while also meeting the burdens of this docket in a timely manner?

180 A. Maybe they cannot. However, Staff did not choose the time for the Joint
181 Applicants to file this petition. The Commission did not impose any initial
182 deadlines on this process. The Joint Applicants themselves decided when
183 to sign the merger agreement, when to begin the integration process, and

184 when to file this docket. The Joint Applicants have no one to blame but
185 themselves if they came into this process ill equipped to support their
186 burden of proof and assuage the Commission's statute-based concerns.

187 Q. Mr. Linginfelter takes exception with your criticism of AGL for its failure to
188 perform a thorough due diligence review. Mr. Linginfelter states that much
189 of the information necessary to review a merger is available publicly. (*Id.*,
190 p. 7) Do you agree?

191 A. No. Certainly, there is a basic amount, and maybe much, information
192 available publicly. However, much of that is accounting and financial
193 information on a very macro level of detail. There is very little, if any,
194 public information that would tell a potential buyer about things such as
195 the physical condition of Nicor's distribution pipelines, the performance
196 characteristics of the Nicor storage fields, the structure of Nicor's gas
197 supply contracts with marketers, and dozens of other operational details.
198 These are essential core business details that I believe are extremely
199 important when an entity is deciding to buy and operate a utility.

200 Q. Mr. Linginfelter stated that AGL "relied heavily on the knowledge that the
201 Commission has an active program of reviewing and monitoring its utilities
202 and we trust that their review is thorough and ongoing." (*Id.*) How would
203 you respond to this statement?

204 A. While I appreciate his confidence in the Commission's capabilities, the
205 knowledge that the Commission is monitoring Nicor cannot possibly
206 replace AGL's need to conduct its own due diligence review. It is not
207 enough for AGL to know about Nicor's regulatory standing. The most
208 significant obstacle to a successful merger could be that the two
209 companies simply have different operational standards, cultures, computer
210 systems, adoption of technology, etc. Only due diligence reviews would
211 uncover these issues, and they may not be at all apparent within the
212 public domain or within the regulatory environment.

213 What is particularly disturbing to me is that AGL would point to
214 Commission regulation as proof that Nicor has no outstanding issues with
215 which to be concerned. Quite the contrary is true: Nicor is currently
216 involved in a decade-old performance based rates ("PBR") investigation
217 where parties to the proceeding have alleged that Nicor intentionally
218 misled the Commission and operated improperly to profit at the expense
219 of ratepayers. (Docket 02-0067, et al.) First, AGL should be extremely
220 concerned about the potential liability from that docket, as Staff and other
221 parties are recommending adjustments totaling \$100 million and more,
222 making it one of the largest penalties the Commission has ever been
223 asked to impose. Secondly, if I were buying a company that had been
224 accused of making financial errors and misleading statements, I would
225 make sure I checked and verified every aspect of the company instead of

226 relying on no more than public documents and possible conversations with
227 that company and its personnel.

228 Q. Do you agree with Mr. Linginfelter when he says that “Mr. Maple is simply
229 incorrect when he supposes that there are significant quantities of private
230 and confidential data on the adequacy, safety, and reliability of Nicor Gas’
231 system that were unknown prior to the due diligence process”?

232 A. No. I have worked on over a dozen Nicor proceedings during my tenure
233 at the Commission, and I have likely seen only a small percentage of the
234 studies and reports that Nicor produces on the various aspects of its
235 business that are never made public. Even though I am limited to this
236 small sampling of the documents, I have literally seen THOUSANDS of
237 documents that Nicor has marked as confidential which deal with
238 adequacy, safety, and reliability - not to mention efficiency and least-cost,
239 which Mr. Linginfelter failed to mention. In fact, in the PBR docket (02-
240 0067, et al.) alone, there are dozens of boxes full of confidential
241 operational and financial records provided by Nicor. Nicor has fought hard
242 to keep these documents out of the public view, so they most certainly
243 were not within the scope of AGL’s review, if all AGL looked at was public
244 information. It is Mr. Linginfelter who is mistaken about the plethora of
245 relevant confidential information in Nicor’s possession. Mr. Linginfelter’s
246 apparent ignorance of these documents leads me to wonder if AGL’s

247 examination of Nicor went into any useful depth in any respect.

248 Q. Mr. Linginfelter stated that you have “not identified one example that
249 would suggest that any diminution in service will occur.” (Joint Applicants
250 Ex. 8.0, p. 11) Is it Staff’s burden to prove that the reorganization will
251 diminish Nicor’s ability to provide adequate, reliable, efficient, safe, and
252 least-cost service?

253 A. No, Section 7-204(b) of the PUA clearly puts the burden on the utility to
254 prove that the proposed reorganization will not diminish service.

255 Q. Have the Joint Applicants met that burden of proof and shown that the
256 proposed reorganization will not diminish service?

257 A. No, they have not. It is not Staff’s obligation to hypothesize about possible
258 merger-related problems that might occur years from now or to provide
259 Mr. Linginfelter the examples he is apparently asking for. However, the
260 Joint Applicants must show that they have carefully studied the many
261 different aspects of operating the utility as a combined company. They
262 should be able to demonstrate that AGL understands the smallest details
263 of the inner workings of Nicor’s operations. They should be able to
264 demonstrate that that they have chosen to maintain or improve all of
265 Nicor’s current operational standards after the integration. Only then
266 should the Commission be satisfied that the proposed reorganization

267 would not diminish service. Instead, to support their position, the Joint
268 Applicants are relying on a hollow promise of maintaining Illinois staffing
269 levels for a short, three-year period after the proposed merger. The Joint
270 Applicants have provided Commission and its Staff no analysis to
271 consider, no integration studies, no revised standards, no due diligence
272 reports – absolutely nothing of substance to demonstrate they have any
273 specific knowledge about how Nicor operates.

274 Q. Does this conclude your rebuttal testimony?

275 A. Yes, it does.